

Exhibit A

1 Sano - rough draft

2 THE VIDEOGRAPHER: Good morning,
3 counsel. My name is Phil Rizzuti. I am a
4 legal videographer in association with
5 TSG Reporting, Inc.

6 Due to the severity of the COVID-19
7 and following the practice of social
8 distancing, I will not be in the same room
9 with the witness. Instead, I will record
10 this videotaped deposition remotely.

11 The reporter, Jeffrey Benz, also will
12 not be in the same room and will swear the
13 witness remotely.

14 Do all parties stipulate to the
15 validity of this video recording, and
16 remote swearing, and that it will be
17 admissible in the courtroom as if it had
18 been taken following Rule 30 of the Federal
19 Rules of Civil Procedure and the state's
20 rules where this case is pending?

21 MS. METZINGER: Yes for the Quincy
22 corporate defendants.

23 MR. GLENNON: Yes for the FTC.

24 THE VIDEOGRAPHER: Thank you.

25 MS. MATUSCHAK: Yes for the New York

<p style="text-align: right;">Page 2</p> <p>1 Sano - rough draft</p> <p>2 State Attorney General's office.</p> <p>3 THE VIDEOGRAPHER: Thank you.</p> <p>4 This is the start of media labeled</p> <p>5 Number 1 of the video-recorded deposition</p> <p>6 of Dr. Mary Sano, in the matter of the</p> <p>7 Federal Trade Commission and the People of</p> <p>8 the State of New York, by Letitia James,</p> <p>9 Attorney General of the State of New York,</p> <p>10 versus Quincy Bioscience Holding Company,</p> <p>11 Inc., a corporation, et al., in the United</p> <p>12 States District Court for the Southern</p> <p>13 District of New York,</p> <p>14 Case Number 117 CV 00124 LLS.</p> <p>15 This deposition is being held on</p> <p>16 October 22, 2021, at approximately</p> <p>17 10:01 a.m.</p> <p>18 My name is Phil Rizzuti. I am the</p> <p>19 legal video specialist from TSG Reporting,</p> <p>20 Inc. The court reporter is Jeffrey Benz in</p> <p>21 association with TSG Reporting. Counsel</p> <p>22 please introduce yourself.</p> <p>23 MS. METZINGER: Good morning. Jaclyn</p> <p>24 Metzinger from Kelley Drye & Warren for the</p> <p>25 Quincy corporate defendants. And I have</p>	<p style="text-align: right;">Page 3</p> <p>1 Sano - rough draft</p> <p>2 with me today my colleagues, Geoffrey</p> <p>3 Castello, Glenn Graham, and Lauren</p> <p>4 Margolies.</p> <p>5 MR. DE LEEUW: Michael de Leeuw on</p> <p>6 behalf of Mark Underwood. I have with me</p> <p>7 today Tamar Wise.</p> <p>8 MR. GLENNON: This is Edward Glennon</p> <p>9 for the Federal Trade Commission. Also</p> <p>10 participating for the FTC are attorneys</p> <p>11 Andrew Warren and Annette Soberats and</p> <p>12 investigator Will Ducklow.</p> <p>13 MS. MATUSCHAK: This is Kate</p> <p>14 Matuschak, and I'm here for the New York</p> <p>15 State Attorney General's office.</p> <p>16 THE VIDEOGRAPHER: Thank you.</p> <p>17 Will the court reporter please swear</p> <p>18 in the witness.</p> <p>19 DR. MARY SANO,</p> <p>20 called as a witness, having been first</p> <p>21 duly sworn by Jeffrey Benz, a Notary</p> <p>22 Public within and for the State of New</p> <p>23 York, was examined and testified as</p> <p>24 follows:</p> <p>25 EXAMINATION BY MS. METZINGER:</p>
<p style="text-align: right;">Page 4</p> <p>1 Sano - rough draft</p> <p>2 Q. Good morning, Dr. Sano. We met</p> <p>3 briefly before we got on the record, but again,</p> <p>4 my name is Jaclyn Metzinger. And I represent</p> <p>5 the Quincy corporate defendants -- excuse me --</p> <p>6 in this matter.</p> <p>7 Have you been deposed before,</p> <p>8 Dr. Sano?</p> <p>9 A. I have.</p> <p>10 Q. How many times have you been deposed?</p> <p>11 A. I'm not sure. It's been many years.</p> <p>12 Q. Would you say less than five times?</p> <p>13 A. Maybe between five and ten times.</p> <p>14 Q. And have those depositions been given</p> <p>15 in your professional capacity or personal</p> <p>16 capacity?</p> <p>17 A. They have.</p> <p>18 Q. Were you designated as an expert</p> <p>19 witness in any of the matters in which you gave</p> <p>20 a deposition?</p> <p>21 A. I was.</p> <p>22 Q. In all of them?</p> <p>23 A. Yes.</p> <p>24 Q. And do you recall any of the names of</p> <p>25 the cases in which you gave your deposition?</p>	<p style="text-align: right;">Page 5</p> <p>1 Sano - rough draft</p> <p>2 A. I do not.</p> <p>3 Q. Do you recall whether you were</p> <p>4 retained as an expert on behalf of the plaintiff</p> <p>5 or the defendant in those cases?</p> <p>6 A. I had -- on both.</p> <p>7 Q. Have you ever been retained as an</p> <p>8 expert witness by the Federal Trade Commission</p> <p>9 in a prior matter?</p> <p>10 A. I have not.</p> <p>11 Q. Have you ever been retained as an</p> <p>12 expert witness by the New York Attorney</p> <p>13 General's office?</p> <p>14 A. I have not.</p> <p>15 Q. Have you ever been retained as an</p> <p>16 expert witness by any other governmental agency?</p> <p>17 A. I think I have. By the U.S. Attorney</p> <p>18 General.</p> <p>19 Q. Do you recall what that matter</p> <p>20 involved?</p> <p>21 A. I don't recall.</p> <p>22 Q. Have any of the matters in which</p> <p>23 you've been retained as an expert witness</p> <p>24 involved a dietary supplement product?</p> <p>25 A. They have not.</p>

<p style="text-align: right;">Page 34</p> <p>1 Sano - rough draft</p> <p>2 "competent and reliable scientific evidence,"</p> <p>3 has been incorporated into any state or federal</p> <p>4 law?</p> <p>5 MR. GLENNON: Objection. Outside the</p> <p>6 scope of the witness's expert report in</p> <p>7 this matter.</p> <p>8 You can answer, Dr. Sano.</p> <p>9 A. Okay. Yeah. I -- I don't know.</p> <p>10 I've not looked at the law so...</p> <p>11 Q. Okay. And do you agree that Prevagen</p> <p>12 is a dietary supplement?</p> <p>13 A. I don't know how it's -- what -- how</p> <p>14 it identifies itself. I don't know that it's</p> <p>15 specific dietary supplement medical food, et</p> <p>16 cetera.</p> <p>17 Q. It's not a drug, though, correct?</p> <p>18 A. I don't know that it markets itself as</p> <p>19 a drug or that it is a drug.</p> <p>20 Q. Are you familiar with the document</p> <p>21 titled "Dietary Supplements and Advertising</p> <p>22 Guide for Industry"?</p> <p>23 A. I am not.</p> <p>24 Q. You've never reviewed the -- I'm going</p> <p>25 to refer to this document as the FTC guidance.</p>	<p style="text-align: right;">Page 35</p> <p>1 Sano - rough draft</p> <p>2 You've never reviewed the FTC guidance before?</p> <p>3 A. I do not -- I don't recall that I</p> <p>4 have.</p> <p>5 Q. And do you recall seeing references to</p> <p>6 the FTC guidance in the expert reports that</p> <p>7 are -- have been submitted by Quincy?</p> <p>8 A. I believe there was references to the</p> <p>9 guidance.</p> <p>10 Q. And --</p> <p>11 A. In -- I would need a review to see</p> <p>12 exactly what was said there.</p> <p>13 Q. And after seeing references to the FTC</p> <p>14 guidance in Quincy's expert reports, you did not</p> <p>15 then go and review the FTC guidance?</p> <p>16 A. No, I did not.</p> <p>17 Q. So you're not offering an opinion</p> <p>18 today rebutting anything that Quincy's experts</p> <p>19 had said with respect to the FTC guidance?</p> <p>20 A. I don't believe I am. My -- my</p> <p>21 commentary is based on the work that I reviewed,</p> <p>22 the primary works that I reviewed.</p> <p>23 Q. And are you offering an opinion that</p> <p>24 the marketing claims for Prevagen comply with</p> <p>25 the FTC guidance?</p>
<p style="text-align: right;">Page 36</p> <p>1 Sano - rough draft</p> <p>2 A. I'm not making any statements about</p> <p>3 the marketing claims.</p> <p>4 Q. Are you aware that the FTC guidance</p> <p>5 has its own definition of "competent and</p> <p>6 reliable scientific evidence"?</p> <p>7 A. I'm not aware.</p> <p>8 Q. Is there any reason why you chose not</p> <p>9 to review the FTC guidance after seeing</p> <p>10 references to it in Quincy's experts' reports?</p> <p>11 A. It wasn't part of the work I was</p> <p>12 engaged to do.</p> <p>13 Q. And can you explain to me exactly what</p> <p>14 your assignment was in this case?</p> <p>15 A. It was --</p> <p>16 MR. GLENNON: Excuse me, sorry.</p> <p>17 Sorry, could you read -- I didn't hear the</p> <p>18 question. Could you please -- could the</p> <p>19 court reporter read it back, please.</p> <p>20 (The record was read back.)</p> <p>21 MR. GLENNON: Thank you.</p> <p>22 A. I believe it's as stated as in the</p> <p>23 report. I was reviewing the -- the material</p> <p>24 that was provided to me to determine if it was</p> <p>25 coming to conclusions that one would expect,</p>	<p style="text-align: right;">Page 37</p> <p>1 Sano - rough draft</p> <p>2 given the standards of how that data is</p> <p>3 collected.</p> <p>4 Q. And that standard is your definition</p> <p>5 of "competent and reliable scientific evidence";</p> <p>6 is that correct?</p> <p>7 MR. GLENNON: Objection.</p> <p>8 A. Yes. My standard is the standards of</p> <p>9 the material in the field -- of the expectations</p> <p>10 in the field.</p> <p>11 Q. Did you draft that phrase, "competent</p> <p>12 and reliable scientific evidence"? Did you come</p> <p>13 up with that phrase for your report?</p> <p>14 A. I believe I did. I edited -- I</p> <p>15 created the first version of the report, and I</p> <p>16 believe it was in there, but I'm not -- I'm not</p> <p>17 sure.</p> <p>18 It may have -- the words may have</p> <p>19 occurred separately. I don't remember the</p> <p>20 versions.</p> <p>21 Q. And -- but you said that you don't</p> <p>22 recall seeing that exact phrase prior to</p> <p>23 being -- working in this case. Is that correct?</p> <p>24 A. Can you ask the question again?</p> <p>25 Q. Sure. I believe you testified earlier</p>

<p style="text-align: right;">Page 258</p> <p>1 Sano - rough draft</p> <p>2 MR. GLENNON: Objection.</p> <p>3 A. What people know. Marketing claims.</p> <p>4 Q. And you're not qualified to offer an</p> <p>5 opinion on whether a marketing claim is</p> <p>6 adequately substantiated. Is that correct?</p> <p>7 MR. GLENNON: Objection.</p> <p>8 A. I don't know about marketing claims.</p> <p>9 I know about claims about cognition</p> <p>10 and memory.</p> <p>11 MS. METZINGER: I don't have any</p> <p>12 further questions. Thank you for your</p> <p>13 time, Dr. Sano.</p> <p>14 THE VIDEOGRAPHER: Is that it? Anyone</p> <p>15 else?</p> <p>16 MR. DE LEEUW: Nothing for Mark</p> <p>17 Underwood.</p> <p>18 MR. GLENNON: Okay, this is Ed Glennon</p> <p>19 for FTC. I would like to take a break. We</p> <p>20 might have some clarifications questions</p> <p>21 for -- or cross, rather.</p> <p>22 THE VIDEOGRAPHER: Okay.</p> <p>23 MR. GLENNON: Can we go off the</p> <p>24 record.</p> <p>25 THE VIDEOGRAPHER: The time is</p>	<p style="text-align: right;">Page 259</p> <p>1 Sano - rough draft</p> <p>2 6:38 p.m. and we are going off the record.</p> <p>3 (A recess was taken from 6:38 to</p> <p>4 time .)</p> <p>5 THE VIDEOGRAPHER: The time is</p> <p>6 7:28 p.m. and we are back on the record.</p> <p>7 EXAMINATION BY MR. GLENNON:</p> <p>8 Q. Hi, Dr. Sano.</p> <p>9 So, earlier, today, you were asked</p> <p>10 about clinical meaningfulness with regard to the</p> <p>11 Madison Memory Study. Do you remember that?</p> <p>12 A. I do.</p> <p>13 Q. Okay.</p> <p>14 And paragraph 13 of your rebuttal</p> <p>15 report, which is Exhibit 2, can I direct you to</p> <p>16 that paragraph, please?</p> <p>17 A. Okay. I'm there.</p> <p>18 Q. Okay.</p> <p>19 So, for the record, the first sentence</p> <p>20 of that paragraph reads, finally with regard to</p> <p>21 the results of the Madison Memory Study I see no</p> <p>22 evidence that any purported improvements on the</p> <p>23 cog state tasks would be clinically meaningful.</p> <p>24 Do you see that statement?</p> <p>25 A. I do.</p>
<p style="text-align: right;">Page 260</p> <p>1 Sano - rough draft</p> <p>2 Q. Do you still agree with that statement</p> <p>3 in your report?</p> <p>4 A. I do.</p> <p>5 Q. Okay.</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And could you -- take a look at</p> <p>8 the rest of that paragraph, there.</p> <p>9 A. Uh-huh. Yes.</p> <p>10 Q. Paragraph 13. Do you still stand by</p> <p>11 the other statements made in paragraph 13?</p> <p>12 A. I do.</p> <p>13 Q. Okay.</p> <p>14 Do you consider yourself to be an</p> <p>15 expert in the field of memory?</p> <p>16 A. Yes. I do.</p> <p>17 Q. Okay. Did you consider standards in</p> <p>18 that field of memory when opining on what</p> <p>19 constitutes competent or reliability scientific</p> <p>20 evidence in this case?</p> <p>21 A. I did. Yes.</p> <p>22 Q. Okay.</p> <p>23 Do you consider yourself to be an</p> <p>24 expert in the field of cognition?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 261</p> <p>1 Sano - rough draft</p> <p>2 Q. Did you consider standards in that</p> <p>3 field when opining on what constitutes competent</p> <p>4 and reliable scientific evidence, in this case?</p> <p>5 A. Yes, I did.</p> <p>6 MR. DE LEEUW: Objection to the form</p> <p>7 of the question. W sorry.</p> <p>8 Q. Okay. You can answer it Dr. Sano.</p> <p>9 A. Yes, I did.</p> <p>10 Q. Do you consider yourself to be an</p> <p>11 expert in the field of cognitive impairment?</p> <p>12 A. I do. Yes.</p> <p>13 Q. Did you consider standards in that</p> <p>14 field when appointing on what constitutes</p> <p>15 competent and reliable scientific evidence, in</p> <p>16 this case?</p> <p>17 A. I did.</p> <p>18 MR. DE LEEUW: Objection to form.</p> <p>19 Q. What was your answer, Dr. Sano?</p> <p>20 A. Yes, I did.</p> <p>21 Q. Okay.</p> <p>22 And do you -- yourself to be an expert</p> <p>23 in the field of neuro psychology?</p> <p>24 A. Yes, I do.</p> <p>25 Q. And did you consider standards in that</p>

<p style="text-align: right;">Page 262</p> <p>1 Sano - rough draft</p> <p>2 field when opining on what constitutes competent</p> <p>3 and reliable scientific evidence, in this case?</p> <p>4 MR. DE LEEUW: Objection to the form</p> <p>5 of the question.</p> <p>6 A. Yes, I did.</p> <p>7 Q. Okay.</p> <p>8 And do you consider yourself to be an</p> <p>9 experts notice field of neuroscience of aging</p> <p>10 and dementia?</p> <p>11 A. Yes, I'm an expert in those areas.</p> <p>12 Q. Okay. Did you consider standards in</p> <p>13 those feels when opining on what constitutes</p> <p>14 competent and reliable scientific evidence, in</p> <p>15 this case?</p> <p>16 MR. DE LEEUW: Object to the form of</p> <p>17 the question.</p> <p>18 A. Yes, I did.</p> <p>19 Q. Okay.</p> <p>20 Now, you've testified earlier today,</p> <p>21 also about the protocol, and standards, for</p> <p>22 standards in the field of clinical trials, for</p> <p>23 reporting elements of a protocol. Do you</p> <p>24 remember that?</p> <p>25 A. I do.</p>	<p style="text-align: right;">Page 263</p> <p>1 Sano - rough draft</p> <p>2 Q. Did you consider the protocol of the</p> <p>3 Madison Memory Study in determining whether the</p> <p>4 analyses of the AD8 zero to 1 and zero to 2 sub</p> <p>5 groups were post hoc?</p> <p>6 MR. DE LEEUW: Objection to the form</p> <p>7 of the question. Leading.</p> <p>8 A. I did. Consider it. The protocol</p> <p>9 didn't mention them. And I considered them to</p> <p>10 be after the protocol was developed.</p> <p>11 Q. Have you stated in your report, that</p> <p>12 the protocol does not refer to the subgroup</p> <p>13 analyses?</p> <p>14 MR. DE LEEUW: Object to the form.</p> <p>15 A. I -- stated in the report that</p> <p>16 there's -- that there was no description of</p> <p>17 those subgroups in the protocol.</p> <p>18 Q. Okay.</p> <p>19 Okay. And I will refer you to the</p> <p>20 document that was marked earlier today as</p> <p>21 Exhibit 3.</p> <p>22 Do you see that?</p> <p>23 Do you see it?</p> <p>24 A. I do see it, yes.</p> <p>25 Q. Okay. And were you asked about</p>
<p style="text-align: right;">Page 264</p> <p>1 Sano - rough draft</p> <p>2 whether you had seen that document, prior to</p> <p>3 today?</p> <p>4 A. Yes, I was asked that.</p> <p>5 Q. Okay. A would you like to modify your</p> <p>6 answer, that you gave previously?</p> <p>7 A. Yeah. Yes. Thank you. I --</p> <p>8 MS. METZINGER: Objection. Hold on,</p> <p>9 Dr. Sano. I'm going to place an objection</p> <p>10 to that question.</p> <p>11 THE WITNESS: I'm sorry.</p> <p>12 Okay.</p> <p>13 A. I didn't hear what you said, it broke</p> <p>14 up. So where do we --</p> <p>15 MR. DE LEEUW: We were both note be</p> <p>16 our objections.</p> <p>17 A. Okay.</p> <p>18 Q. Have you seen that document prior to</p> <p>19 today?</p> <p>20 A. I have not seen the whole document. I</p> <p>21 would clarify and say that I've seen a paragraph</p> <p>22 from the document.</p> <p>23 Q. Okay. I have no --</p> <p>24 A. I -- I saw the paragraph, I did not</p> <p>25 receive the document.</p>	<p style="text-align: right;">Page 265</p> <p>1 Sano - rough draft</p> <p>2 MR. GLENNON: Okay. I have no further</p> <p>3 questions.</p> <p>4 MS. METZINGER: We're going to have to</p> <p>5 take another break. Can we take five</p> <p>6 minutes, please.</p> <p>7 THE VIDEOGRAPHER: The time is</p> <p>8 7:34 p.m., and we are going off the record.</p> <p>9 (A recess was taken from 7:34 to</p> <p>10 7:39.)</p> <p>11 THE VIDEOGRAPHER: The time is</p> <p>12 7:39 p.m. and we are back on the record.</p> <p>13 EXAMINATION BY MS. METZINGER:</p> <p>14 Q. Dr. Sano, did you speak with any other</p> <p>15 experts in the field of memory to determine</p> <p>16 whether they agree with the opinions set forth</p> <p>17 in your report?</p> <p>18 A. Did not.</p> <p>19 Q. Did you speak with any other experts</p> <p>20 in the field of cognition to determine whether</p> <p>21 they agreed with the opinions expressed in your</p> <p>22 reports?</p> <p>23 A. I did not.</p> <p>24 Q. Did you speak with any experts in the</p> <p>25 field of cognitive impairment to determine</p>

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2 whether they agreed with the opinions expressed

3 in your reports?

4 A. I did not.

5 Q. Did you speak with any other experts

6 in the field of neuropsychology to determine

7 whether they agree with the opinions expressed

8 in your report?

9 A. I did not.

10 Q. Did you speak with any experts in the

11 field of neurosciences of aging and dementia, to

12 determine whether they agreed with the opinions

13 expressed in your report?

14 A. I did not.

15 Q. I would like to draw your attention

16 back to Exhibit 3, please.

17 A. To Exhibit 3, is that what you said?

18 DIR Q. Yes.

19 Which paragraph in this document have

20 you seen before today?

21 MR. GLENNON: I'll object. On the

22 basis of work product, and instruct the

23 witness not to answer that.

24 Q. Are you --

25 MR. DE LEEUW: She assessed, just want

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1 Sano - rough draft

2 Q. Did counsel remind you, over a break,

3 that he had shown you this paragraph yesterday

4 in preparation for today's deposition?

5 A. I don't recall whether or not counsel

6 reminded me or I recalled it as we were meeting.

7 Q. Did you have that recollection during

8 a conversation with counsel over the break?

9 A. Did I -- I did have the recollection.

10 Over the --

11 Q. While you were speaking with counsel

12 over a break?

13 A. I did.

14 Q. Dr. Sano, did you see the unidentified

15 referenced paragraph, prior to submitting either

16 of your reports in this case?

17 A. Never.

18 MS. METZINGER: And Mr. Glennon, I

19 just wanted to confirm that you're

20 directing Dr. Sano not to identify which

21 paragraph of the dietary supplement

22 guidelines that she has reviewed prior to

23 today, are you instruct her not answer?

24 MR. GLENNON: Yes, I am.

25 MS. METZINGER: Okay. Then we're

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1 Sano - rough draft

2 to respond to the objection she testified

3 that she saw one paragraph. I think --

4 we're then allowed to ask her which

5 paragraph that was. You can say that --

6 you can certainly -- you know interpose an

7 objection about any discussion you had

8 about it but she specifically testified

9 that she reviewed a paragraph. And

10 therefore we're entitled to find out what

11 that was.

12 MR. GLENNON: I disagree.

13 Q. Dr. Sano when did you see this

14 unidentified paragraph from Exhibit 3?

15 A. Yesterday.

16 Q. Was that the first time that you saw

17 this -- this paragraph from the unidentified

18 Exhibit 3?

19 A. It is.

20 Q. And is that why it's not listed in

21 your report?

22 A. That's correct.

23 Q. Either your reports?

24 A. That's correct.

25 MR. GLENNON: Objection.

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1 Sano - rough draft

2 going to have to leave Dr. Sano's

3 deposition open because we're going to go

4 to seek a ruling from Judge Stanton on that

5 point. The despite of -- a fair amount of

6 this deposition today, has been based on

7 the fantastic that Dr. Sano testified that

8 she had never seen the FTC dietary

9 supplement guide prior to today's

10 deposition. And we're going to reserve the

11 right to question Dr. Sano about that

12 paragraph, and any other paragraphs from

13 the dietary supplement guidance that we see

14 fit.

15 A. So can I make a comment.

16 MR. GLENNON: Hole on. I understand

17 your position, Jaclyn, I disagree with it,

18 I don't believe you're entitled to keep the

19 deposition open. I think -- which

20 paragraph she reviewed, is -- which -- the

21 that we reviewed with her is privileged so

22 yes that's the basis of my instruction.

23 And I -- ask the witness not to --

24 MS. METZINGER: I will disagree with

25 that, and I will remind you that during